

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:	:	CIVIL ACTION
	:	
KATHY R. WEAVER	:	No. 05-3018

MEMORANDUM AND ORDER

Schiller, J.

February 7, 2006

Kathy R. Weaver appeals a final bankruptcy order requiring her to apply all her disposable income to her bankruptcy plan for sixty months, rather than for the thirty-nine month period she proposed. For the reasons set forth below, the decision of the Bankruptcy Court is affirmed.

I. BACKGROUND

On February 21, 2003, Appellant Weaver filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code. (Br. of Appellant at 2.) On March 15, 2004, the Bankruptcy Court confirmed her Second Amended Plan. (*Id.*) Unlike Weaver's two previously filed plans, the Second Amended Plan was a five-year rather than a three-year plan. (Appellee's Mot. to Dismiss Ex. C [Answer to Debtor's Mot. to Modify Plan].) Appellee Sarasota, Inc. ("Sarasota") is an unsecured creditor of Weaver. (*Id.*) Sarasota filed an appeal in this Court contesting confirmation of the Second Amended Plan, alleging that Weaver had not committed all her disposable income to the Plan. (Appellee's Mot. to Dismiss ¶¶ 3-5.) Specifically, Sarasota objected to Weaver's inclusion of cigarette expenses and expenses related to her 401k as necessary expenses. *Sarasota*, 2004 U.S. Dist. LEXIS 22515, at *4. On November 8, 2004 this Court entered an Order stating: "The Bankruptcy Court's decision that Debtor's 401k contribution and loan repayment expenses are not disposable income is **REVERSED**. Accordingly, Debtor must pay an additional \$122.00 under her

Chapter 13 Plan The decision of the Bankruptcy Court is **AFFIRMED** in all other respects.”
Sarasota, 2004 U.S. Dist. LEXIS 22515, at *16.

On January 18, 2005, Weaver filed a motion with the Bankruptcy Court to modify the confirmed plan, proposing to pay an additional \$122 per month for the remaining thirty-nine months of her plan. (Br. of Appellant at 2; Appellee’s Mot. to Dismiss Ex. B [Debtor’s Mot. to Modify Confirmed Plan].) On May 20, 2005, the Bankruptcy Court: (1) denied Weaver’s motion because it did not comply with this Court’s Order of November 8, 2004; and (2) ordered her to file a motion that modified her plan to include an additional \$122 per month for the sixty months of her confirmed plan. (Appellee’s Mot. to Dismiss Ex. D [*In re: Weaver*, Order of the U.S. Bankruptcy Court for E.D. Pa., Case No. 03-20829T (May 20, 2005)].) The Court presently reviews that decision.

II. STANDARD OF REVIEW

District courts have jurisdiction over appeals from final bankruptcy court orders. 28 U.S.C. § 158(a) (2005). A district court reviewing a bankruptcy court’s decision has plenary review over the bankruptcy court’s legal conclusions. *See Am. Flint Glass Workers Union v. Anchor Resolution Corp.*, 197 F.3d 76, 80 (3d Cir. 1999); *Computer Personalities Sys. v. Aspect Computer*, 320 B.R. 812, 816 (E.D. Pa. 2005). A district court must accept a bankruptcy court’s findings of fact unless they are “clearly erroneous.” FED. R. BANKR. P. 8013 (“Findings of fact . . . shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.”).

III. DISCUSSION

In this appeal, Weaver argues that the Bankruptcy Court was clearly erroneous in finding that she must modify her Chapter 13 plan to pay an additional \$122 per month in disposable income for sixty months. (Br. of Appellant at 4.) She also asserts that the Bankruptcy Court incorrectly interpreted this Court's November 8, 2004 Order. *Id.* Yet neither the length of Weaver's plan nor the length of time she would contribute her disposable income were issues previously presented to this Court. *Sarasota*, 2004 U.S. Dist. LEXIS 22515, at *4. The Court's November 8, 2004 Order dealt only with the validity of two types of necessary expenses that Weaver claimed. *Id.* The Court's determination that Weaver could not claim her 401k-related expenses as necessary revealed her disposable income to be higher than previously calculated. *Id.* at *16. Correcting the amount of Weaver's disposable income did not affect the length of her plan.

Weaver asserts that 11 U.S.C. § 1325(b) requires that debtors apply all their disposable income to their plans for only thirty-six months. (*Id.*) Section 1325(b) reads:

- (1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan --
 - (A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or
 - (B) the plan provides that all of the debtor's projected disposable income to be received in the *three-year period* beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

11 U.S.C. § 1325(b) (2003) (emphasis added).¹ Contrary to Weaver's assertion, § 1325(b) does not impose an inflexible thirty-six month limit on a debtor's commitment of disposable income to a

¹ The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 amended the Bankruptcy Code; the changes went into effect 180 days after the Act's enactment on April 20, 2005. 11 U.S.C. § 1501(a) (2005). Because this case was filed prior to the Act's effective date, the amendments do not apply here. *See* 11 U.S.C. § 1501(b)(1).

Chapter 13 plan. Rather the Code requires a standard minimum length of thirty-six months for any plan objected to by the trustee or an unsecured creditor, unless the plan provides for payment of all allowable unsecured claims. *Id.*; see also *In re: Martin*, 189 B.R. 619, 625 (Bankr. E.D. Va. 1995) (“[T]he Bankruptcy Code mandates a minimum of 36 months duration for any plan objected to unless that plan pays 100% of allowed unsecured claims.”) (citing 11 U.S.C. § 1325(b)(1)(B)). Moreover, § 1325 of the Bankruptcy Code does not stand alone. Section 1322(d) allows a court to approve a plan up to a maximum length of five years for cause. 11 U.S.C. § 1322(d) (2003) (“The plan may not provide for payments over a period that is longer than three years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than five years.”). A debtor’s voluntary proposal to extend a bankruptcy plan beyond three years constitutes cause to extend the plan. See *In re: Porter*, 102 B.R. 773, 777 (B.A.P. 9th Cir. 1989); *In re: Pierce*, 82 B.R. 874, 882 (Bankr. D. Ohio 1987); *In re: Davis*, 68 B.R. 205, 213 (Bankr. D. Ohio 1986). In her Second Amended Plan, Weaver proposed extending the length of her plan from three to five years. (Appellee’s Mot. to Dismiss ¶ 2.)

In *In re: Norris*, the bankruptcy court determined that debtors are required to continue to commit all their disposable income beyond the first three years of a five-year plan. *In re: Norris*, 165 B.R. 515, 517 (Bankr. M.D. Fla. 1994). The debtors in *Norris*, like Weaver, claimed that the Bankruptcy Code requires debtors to commit their disposable income for only three years. *Id.* Just as Weaver argues, the *Norris* debtors contended that because § 1325(b)(1)(B) specifically refers to a three-year time period, Congress therefore intended to give Chapter 13 debtors a break after the first three years of a five-year plan and did not intend for them to apply all disposable income for the length of a sixty-month plan. *Id.* The *Norris* court rejected this argument and held that § 1325

“requires use of all disposable income to fund a plan regardless of the duration of the plan.” *Id.* Because § 1322 permits a longer plan period than the standard thirty-six month plan, the court reasoned that the reference to a three-year period § 1325 does not exclude the possibility that a debtor contribute all disposable income for the length of a five-year plan. *Id.* The *Norris* court therefore required the debtors to commit all their disposable income for the length of their five-year plan. *Id.* at 518. Likewise, this Court holds that § 1325(b)(1)(B) does not prohibit Weaver from committing all her disposable income for the full length of her five-year plan.²

IV. CONCLUSION

For the reasons set forth above, the Bankruptcy Court’s May 20, 2005 decision is affirmed. An appropriate Order follows.

² Sarasota asserts that res judicata and collateral estoppel require this Court to dismiss Weaver’s appeal. (Appellee’s Mot. to Dismiss ¶ 10.) Weaver counters that the appeal serves the legitimate purpose of interpreting this Court’s November 8, 2004 Order. (Appellant’s Resp. in Opp’n to Appellee’s Mot. to Dismiss ¶ 10.) The Court evaluates and denies the appeal on its merits.

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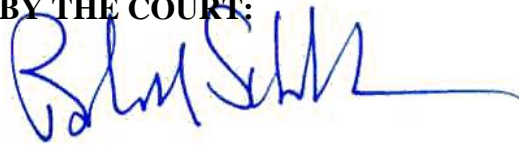
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ORDER

AND NOW, this 7th day of **February, 2006**, upon consideration of the Brief of Appellant Weaver, Appellee Sarasota, Inc.'s Motion to Dismiss, Appellant's Response in Opposition to Appellee's Motion to Dismiss, and for the foregoing reasons, it is hereby **ORDERED** that:

1. The judgment of the Bankruptcy Court is **AFFIRMED**, and the appeal is **DENIED**.
2. Appellee's Motion to Dismiss (Document No. 4) is **DENIED as moot**.
3. The Clerk of Court is directed to close this case.

BY THE COURT:

A handwritten signature in blue ink, appearing to read 'Berle M. Schiller', is written over a horizontal line.

Berle M. Schiller, J.